HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. A. No. 114 of 2000

Date of Decision:12.4.2007

State of H.P. ……. Appellant

Versus

Ramesh Chand and Others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No.

For the appellant -State : Mr. C. B. Singh, Dy. Advocate General.

For the respondents : Mr. Naveen Kumar Bhardwaj, Advocate.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

An FIR No.454 of 1995 under Sections 147, 323, 427, 451 & 506 IPC was registered with Police Station, Una. It is the case of the prosecution that on 26th September, 1995, Ramesh Chand made a complaint with Incharge, Police Post, Haroli to the effect that at about 6.00 PM, when he reached his house, he noticed that some people were demolishing the wall being built on first floor of his house. While approaching the gate of his house, he saw Paras Ram, Harmesh, Gurbax, Ram Kumar and Mangat Ram, all residents of village Lalri, came down

from the stair case of his house and run away threatening him of dire consequences. Shri Satpal, Shri Goggi and Smt. Parveen had also seen the above named accused persons demolishing the wall of the house and they had in fact pushed Parveen (PW –2 wife of the complainant) on her objecting to the same. The accused persons were put to trial under Sections 147, 323, 427, 451 & 506 IPC. Prosecution in all has examined nine witnesses. Except for four witnesses, all are official witnesses. The trial Court framed the following points for determination and held the accused not guilty:

> "1. Whether prosecution proved beyond reasonable doubt that accused persons in furtherance of common intention committed criminal house-trespass by entering into the house of the complainant and caused damaged to him by demolishing his wall and also threatened to kill the complainant and his family members.
>
> 2. Final order."

I have perused the record. Perusal of the statements suggests that the culpability of the accused persons is not made out for conviction for offences under Sections 147, 323, 427, 451 & 506 IPC.

From the statements of the material eye witnesses, the following emerges:-

In the cross examination PW-1 has stated that the compromise between the parties had taken place on 30th September, 1995. He also says that he had not seen the wall being demolished. PW-2 Smt. Parveen Kumari in her examination-in-chief has stated that the accused persons come with Lathies and Bhalas (weapon), however, there is no such mention in the FIR or in the statement of PW-1. She has

further stated in her cross-examination that no medical was got done by the police nor any statement was recorded by the police at the time of alleged incident or during investigation. PW-3 Satpal has admitted in cross-examination that the accused persons had only talked to Parveen and thereafter had gone away. This witness has also stated that the parties had compromised the matter subsequently and there were lot of people who had collected outside and none have been examined by the petitioner with regard to the demolition of wall these are serious contradictions.

The trial Court has already held that the eye witnesses have not been able to support the case of the prosecution, and that the statements of the witnesses do not inspire confidence. There are serious contradictions in their statements. Moreso, the fact that the parties had already entered into civil litigation pertaining to setting up of the wall and opening up of the window. The parties had already entered into compromise on 29.9.2995 i.e. 3 days after the date of occurrence. The alleged incident pertains to the demolition of wall, which was being constructed by the complainant. Admittedly, the accused persons and the complainant are immediate neighbours.

[In **Balbir Singh** vs. **State of Punjab,** reported in AIR 1957 SC 216, it has been held as under :-

> "It is now well settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration; and the slowness of

> an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses must also be kept in mind, and there must be substantial and compelling reasons for the appellate Court to come to a conclusion different from that of the trial Judge."

In view of the aforesaid facts and circumstances, I see no reason to interfere with the order of acquittal passed by the Addl. CJM, Court No.-1, Una , in case No. 69-II of 1996, on 20th November, 1999. Bail bonds stand discharged.

No order as to costs.

(Sanjay Karol),
Judge.

April 12, 2007
(rana)